



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

January 6, 1998

Mr. Jesús Toscano, Jr.
Administrative Assistant City Attorney
Office of the City Attorney
City Hall
Dallas, Texas 75201

OR98-0043

Dear Mr. Toscano:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 111823.

The City of Dallas (the "city") received a request for information concerning the investigation of specific claims. You state that the city has released most of the information to the requestor. You contend, however, that the remaining requested information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.103(a) excepts from disclosure information:

(1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and

(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

The city has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990)

at 4. The city must meet both prongs of this test for information to be excepted under 552.103(a).

Under Open Records Decision No. 638 (1996), a governmental body may establish that litigation is reasonably anticipated by showing that (1) it has received a claim letter from an allegedly injured party or his attorney, and (2) the governmental body states that the letter complies with the notice of claim provisions of the Texas Tort Claims Act ("TTCA"), chapter 101 of the Civil Practice and Remedies Code, or applicable municipal statute or ordinance. You claim that litigation is reasonably anticipated because the city has received three notice of claim letters from the requestor, which you have submitted to this office as Exhibit "C." You state that Exhibit "C" conforms with the requirements of the Dallas City Charter Chapter XXIII. Upon review of the submitted information which you claim is responsive to this request, we conclude that you have made the requisite showing that the requested information relates to anticipated litigation for purposes of section 552.103(a). Therefore, the city may withhold the requested information.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



Vickie Prehoditch
Assistant Attorney General
Open Records Division

VDP/glg

Ref.: ID# 111823

Enclosures: Submitted documents

cc: Ms. Elsie Risby
2900 Dillido Road, Apt. # 212
Dallas, Texas 75228
(w/o enclosures)